

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENDALL ROBERTSON,	§
	§ No. 57, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0603015797
	§
Plaintiff Below-	§
Appellee.	§

Submitted: April 27, 2009

Decided: June 9, 2009

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 9<sup>th</sup> day of June 2009, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Kendall Robertson, filed an appeal from the Superior Court's January 13, 2009 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) Robertson was charged by indictment with Trafficking in Heroin (50 Grams or More), Possession With Intent to Deliver Heroin, and other drug and weapon offenses. While the indictment was pending, Robertson, through counsel, filed a motion to suppress evidence of the drug and weapon charges. Following an evidentiary hearing and the submission of post-hearing briefs, the Superior Court denied the motion. Thereafter, on August 7, 2007, Robertson pleaded guilty to the lesser-included charge of Trafficking in Heroin (10-49 Grams) and the original charge of Possession With Intent to Deliver Heroin. On the trafficking conviction, Robertson was sentenced to 10 years of Level V incarceration. On the possession conviction, he was sentenced to 8 years at Level V, to be suspended after 5 years for decreasing levels of supervision. Robertson's convictions and sentences were affirmed by this Court on direct appeal.<sup>2</sup>

(3) In his Superior Court postconviction motion, Robertson claimed that his counsel provided ineffective assistance during the suppression proceedings by having failed to a) file a reply to the State's answer; b) conduct a proper cross-examination of the witnesses at the

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<sup>1</sup> Supr. Ct. R. 25(a).

<sup>2</sup> *Robertson v. State*, Del. Supr., No. 428, 2007, Ridgely, J. (June 2, 2008).

suppression hearing; and c) assert the proper arguments in support of his suppression motion. In his appeal from the Superior Court's denial of his motion for postconviction relief, Robertson's sole claim is that the Superior Court abused its discretion by failing to expand the record with his counsel's affidavit or conduct a hearing on his claims of ineffective assistance of counsel in connection with the suppression hearing.<sup>3</sup>

(4) The record reflects that Robertson's sole claim in his direct appeal was that the Superior Court erred in denying his motion to suppress. In its June 2, 2008 decision on direct appeal, this Court held that, by entering a voluntary guilty plea, Robertson had waived any right to challenge the constitutionality of his arrest.<sup>4</sup> For purposes of the present appeal, we conclude that any claims Robertson may have had regarding his counsel's performance at the suppression hearing likewise have been waived.<sup>5</sup> We further conclude that the Superior Court did not abuse its discretion by failing to expand the record with Robertson's counsel's affidavit or to

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<sup>3</sup> Robertson does not claim ineffective assistance of counsel in connection with his guilty plea.

<sup>4</sup> *Robertson v. State*, Del. Supr., No. 428, 2007, Ridgely, J. (June 2, 2008) (citing *Downer v. State*, 543 A.2d 309, 311-13 (Del. 1988) (a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea)).

<sup>5</sup> This Court may affirm the Superior Court's ruling on grounds different from those relied upon by the Superior Court. *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995).

conduct a hearing on his ineffectiveness claims. As such, Robertson's claim is without merit and the Superior Court's judgment must be affirmed.

(5) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice